II. SOUTHWESTERN BELL HAS FULLY IMPLEMENTED ITS CHECKLIST OBLIGATIONS WITH RESPECT TO ADVANCED SERVICES

A. Southwestern Bell Is in Full Compliance with the Line Sharing Reconsideration Order

AT&T contends that SWBT fails to provide line sharing over loops served by digital loop carrier ("DLC") equipment, and that this failure to offer "line sharing over fiber-fed loops at the central office" violates the Line Sharing Reconsideration Order.[20] In making this argument, AT&T distorts the actual language of that order, and altogether ignores both the UNE Remand Order[21] and this Commission's Order clarifying the Line Sharing Reconsideration Order. See Clarification Order.[22] If those orders are to retain any operative force, the Commission has no choice but to reject AT&T's assertions outright.

SWBT fully complies with all of its line sharing obligations, allowing competing carriers to provision data service over the high frequency portion of a loop that serves a SWBT voice customer. See Chapman Aff. ¶¶ 71-98; Chapman Reply Aff. ¶¶ 3-7. SWBT provides unbundled access to the HFPL, defined as "the frequency above the voiceband on a copper loop facility that is being used to carry traditional POTS analog circuit-switched voiceband transmissions," whether SWBT's voice customers are served by copper or by DLC facilities. Sparks Aff.

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[20] Third Report and Order on Reconsideration in CC Docket No. 98-147, Fourth Report and Order on Reconsideration in CC Docket No. 96-98, Third Further Notice of Proposed Rulemaking in CC Docket No. 98-147, Sixth Further Notice of Proposed Rulemaking in CC Docket No. 96-98, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 98-147 & 96-98, FCC 01-26 (rel. Jan. 19, 2001).

[21] Third Report and Order and Fourth Further Notice of Proposed Rulemaking, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, 15 FCC Rcd 3696 (1999).

[22] Order Clarification, Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket Nos. 98-147 & 96-98, DA 01-480 (rel. Feb. 23, 2001).

Attach. C, Optional Line Sharing Amendment § 2.4. Moreover, CLECs can access the HFPL at either a SWBT central office or at a remote terminal. See Chapman Reply Aff. ¶¶ 6-7; Line Sharing Reconsideration Order ¶ 10.

SWBT allows CLECs to provide data service to SWBT voice customers served via DLC because it both unbundles the HFPL and provides access to the high frequency portion of the copper distribution facilities. The obligations set forth in the Line Sharing Reconsideration Order extend no further. Indeed, as the Commission made clear in that Order, AT&T's assertion that SWBT must provide "line sharing" over an entire fiber loop is logically incoherent: "the high frequency portion of the loop network element . . . is only available on a copper loop facility." Line Sharing Reconsideration Order ¶ 10. At the interface between the copper distribution plant and the fiber feeder segment, "line sharing" is, by definition, no longer possible.[23]

The fact that carriers cannot strictly "line share" once the signal moves from copper to fiber facilities in no way eviscerates a CLECs' ability to access the high frequency portion of a loop served by DLC, as AT&T contends. A CLEC can still access the HFPL in one of two ways. First, to the extent that home run copper facilities are available to that customer address, the CLEC can access the HFPL at the central office once SWBT moves the end user to a home run copper loop. See Line Sharing Reconsideration Order ¶ 13 ("competitive LECs have the flexibility to engage in line sharing using digital subscriber line access multiplexer ("DSLAM")

[23] AT&T's inability to grasp this concept is well illustrated by AT&T's assertion that SWBT's definition of the HFPL is somehow so "restrictive" as to be "inconsistent with the Line Sharing Reconsideration Order." AT&T Comments at 39. But the definition of the HFPL set forth in the optional Line Sharing Amendment to the M2A is not only identical to that contained in the Commission's rules, see 47 C.F.R. § 51.319(h)(1), it is substantively identical to the definition articulated in the Line Sharing Reconsideration Order itself. See Line Sharing Reconsideration Order ¶ 10.

facilities that they have already deployed in central offices"). Alternatively, the CLEC can access the HFPL before the copper feeder enters the DLC equipment – typically at the serving area interface or fiber distribution interface – splitting the voice from the data component before the signals move onto fiber facilities. See Chapman Reply Aff. ¶ 5. So long as the CLEC locates a DSLAM at or near the remote terminal, it can utilize available dark fiber or fiber feeder subloops to transmit the data signal through the central office and onto the packet switched network. The Line Sharing Reconsideration Order simply made clear that CLECs can access "fiber feeder subloops for line sharing" or for any other purpose. Line Sharing Reconsideration Order ¶ 10. See also id. ¶ 12 ("We clarify that where a competitive LEC has collocated a DSLAM at the remote terminal, an incumbent LEC must enable the competitive LEC to transmit its data traffic from the remote terminal to the central office.").

What the Line Sharing Reconsideration Order does not require – and therein lies the heart of AT&T's complaint – is unbundled access to the packet switching functionality. AT&T simultaneously contends that "SWBT cannot satisfy its obligation to provide line-sharing over a DLC-equipped, fiber-fed loop by permitting CLECs to access all-copper loops . . . from the customers' premises to the central office," AT&T Comments at 40, and that a CLEC need not collocate in the remote terminal, id. But under those circumstances – i.e. where the CLEC neither collocates a DSLAM at the remote terminal nor will accept home run copper – a CLEC cannot provide both voice and data services over a loop served by DLC unless SWBT itself provides unbundled packet switching. See Chapman Reply Aff. ¶ 6. SWBT has no such obligation.

As the Commission explained in its Clarification Order, "the Line Sharing Reconsideration Order in no way modified the criteria set forth in the Commission's UNE

Remand Order regarding the unbundling of packet switching functionality." Clarification Order ¶ 1. In the UNE Remand Order, the Commission made clear that an incumbent must unbundle packet switching only in the limited circumstances when "a requesting carrier is unable to install its DSLAM at the remote terminal or obtain spare copper loops." 15 FCC Rcd at 3839 ¶ 313. So long as SWBT provides one or both of these alternatives, it need not offer packet switching. While the Commission is currently investigating whether to require unbundled access to the packet switching functionality provided by Next Generation Digital Loop Carrier ("NGDLC") systems such as those employed as part of SBC's Project Pronto,[24] SWBT has no present obligation to unbundle those facilities. AT&T's assertion to the contrary simply has no basis in law.[25]

B. SBC Has Satisfied Its Obligations To Offer for Resale the Advanced Telecommunications Services It Provides at Retail

The 1996 Act requires an incumbent LEC "to offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." 47 U.S.C. § 251(c)(4)(A). In the ASCENT decision, the D.C. Circuit made clear that this discounted resale obligation extends to ASI, SWBT's separate advanced services affiliate. Association of Communications Enters. (ASCENT) v. FCC, 235 F.3d 662 (D.C. Cir. 2001). As this Commission has interpreted the statute, "[t]he category of services subject to the provisions of section 251(c)(4) is determined . . . by whether those

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[24] See generally Line Sharing Reconsideration Order.

[25] WorldCom's assertion that SWBT must share the packet switching functionality contained in the NGDLC facilities of Project Pronto fails for precisely the same reason. See WorldCom Comments at 17-18. Since SWBT has committed either to provide home run copper or to permit CLECs to collocate at the remote terminal, SWBT need not provide unbundled access to such packet switching.

services are telecommunications services that an incumbent LEC provides (1) at retail and (2) to subscribers who are not telecommunications carriers."[26] Because advanced services are telecommunications services, and because they are offered almost exclusively to residential and business end users and to Internet Service Providers ("ISPs") – "all subscribers that are not 'telecommunications carriers'" – the scope of the advanced services that must be offered for discounted resale turns on whether particular services are offered "at retail." Second Advanced Services Order, 14 FCC Rcd at 19242, ¶ 10.

Recognizing that the statute does not define the term "at retail," the Commission employed traditional tools of statutory construction in the Second Advanced Services Order to assess whether advanced services offered to residential and business end users and to ISPs involve retail transactions. See id. at 19243, ¶ 12. As the Commission there explained, in its ordinary meaning, "retail" denotes "direct sales of a product or service to the ultimate consumer for her own personal use or consumption." Id. at 19243, ¶ 13 (quoting Webster's Deluxe Unabridged Dictionary 1545 (2d ed. 1987) and Black's Law Dictionary 1315 (6th ed. 1990)).

Applying this definition of retail to the specific types of transactions involving advanced services, the Commission reached two separate conclusions. First, the Commission reasoned that residential and business end users purchase advanced services for their own use or consumption and that sales to these ultimate consumers were retail transactions subject to section 251(c)(4)'s discounted resale obligation. Second, the Commission concluded that advanced services sold to ISPs as an input component for the ISPs high speed Internet access product are not sold at retail. See id. at 19246, ¶ 19. "DSL services sold to [ISPs] are not targeted to end-

[26] Second Report and Order, Deployment of Wireline Services Offering Advanced Telecommunications Capability, 14 FCC Rcd 19237, 19242, ¶ 9 (1999) ("Second Advanced Services Order").

user subscribers, but instead are targeted to [ISPs] that will combine a regulated telecommunications service with an enhancement, Internet service, and offer the resulting service, an unregulated information service, to the ultimate end-user." Id. at 19245, ¶ 17. The Commission made the analogy to exchange access services, which are sold on a wholesale basis to IXCs for use in providing long distance service to the ultimate consumer. See id. (citing Local Competition Order, 11 FCC Rcd at 15934, ¶¶ 873-874). The Commission has incorporated this understanding in its rules, which provide that "advanced telecommunications services sold to [ISPs] as an input component to the [ISPs'] retail Internet service offering shall not be considered to be telecommunications services offered on a retail basis that incumbent LECs must make available for resale at wholesale rates." 47 C.F.R. § 51.605(c).

As Lincoln A. Brown explained in his initial affidavit, before SWBT transferred its advanced services customers to ASI pursuant to the SBC/Ameritech Merger Conditions, SWBT provided retail DSL transport to a small number of residential customers. See Brown Aff. ¶¶ 43-44. These customers (which number less than 1,900 in Missouri) eventually became ASI customers, and ASI continued to honor SWBT's prior commitments even though ASI itself was not otherwise offering DSL transport service to residential customers. Although ASI continues to transition these "grandfathered" customers over to ISPs, any CLEC can resell DSL transport to "grandfathered" SWBT retail customers subject to the section 251(c)(4) wholesale discount. See id. ¶ 44. Likewise, ASI makes available for discounted resale its Frame Relay services and other customer service arrangements ("CSAs") that it offers at retail to business customers. See id. ¶¶ 46-48. No CLEC has raised any question about SWBT's and ASI's compliance with both the ASCENT decision and section 251(c)(4) with respect to any of these retail services.

In addition to these retail services, ASI offers DSL transport to ISPs on a wholesale basis for use as an input component in the ISPs' own high speed Internet access products. This "combined" or "enhanced" service offering is then sold directly to end user customers for their own consumption – the essence of a retail transaction. See Second Advanced Services Order, 14 FCC Rcd at 19243, ¶ 13. Because the DSL transport input is not itself a retail offering under the Second Advanced Services Order, the plain statutory language of section 251(c)(4) provides that ASI has no legal obligation to offer these wholesale DSL services for resale at a discount. See id. at 19246, ¶ 19.

AT&T's assertion that SWBT and ASI fail to comply with section 251(c)(4) and the ASCENT decision is, in AT&T's own words, "difficult to fathom." While AT&T maintains that ASI markets DSL service "directly to end-user customers" on a "ubiquitous" basis, see AT&T Comments at 33, AT&T is wrong.[27]

First, AT&T's assertion that SWBT markets DSL transport directly to the public is completely baseless. AT&T has confused ASI with the SBC's own Internet Service Provider – "SBIS" – that itself markets a high speed Internet access product directly to the public. See Brown/Habeeb Joint Reply Aff. ¶ 10(a). The SBC website makes readily apparent that customers will be purchasing a high speed Internet access product directly from SBIS and that ASI merely provides the underlying DSL transport to SBIS.[28] Under the Second Advanced

[27] Because the "concerns" expressed by the Department of Justice are exclusively based upon AT&T's comments, see DOJ Evaluation at 20 & n.73, this response to AT&T's allegations applies equally to DOJ's expressed concerns.

[28] Likewise, the SBC press releases discussing the company's quarterly earnings discuss data customers served by SBC, not by ASI or by SWBT. AT&T tries to skate around this fact by omitting the word "SBC" from the press release's statement that "SBC ended the year with a total of 767,000 DSL subscribers." Compare AT&T Comments at 34 & n.17. AT&T's

Services Order, the enhanced service that SBIS sells directly to ultimate customers is "an unregulated information service." Second Advanced Services Order, 14 FCC Rcd 19245, ¶ 17. The fact that ASI and SBIS share the same corporate parent – SBC – is ultimately irrelevant. Verizon Internet Solutions and Verizon Advanced Data, Inc. likewise share the same parent. The Commission reviewed the parent's (Verizon's) DSL tariff in the Second Advanced Services Order and found that DSL transport sold as an input component to ISPs is wholesale in nature. See id. at 19240-41, 19244, ¶¶ 7, 15.

Nor is there any factual merit to AT&T's claim that SWBT's business plan somehow involves the mass marketing of DSL transport services to the public. See AT&T Comments at 34. As Lincoln A. Brown explains, SWBT itself has not offered advanced services in Missouri for more than a year. See Brown Aff. ¶ 10. While SWBT does engage in joint marketing with ASI, as expressly permitted by the Merger Conditions, see SBC/Ameritech Merger Order[29] App. C, 14 FCC Rcd at 14970-71, ¶ 3(a), SWBT itself has no business plans involving DSL transport – a product that SWBT does not offer. Indeed, with the exception of certain Project Pronto-related equipment not relevant here,[30] SWBT does not even own any of the "Advanced Services Equipment . . . used to provide Advanced Service," including DSLAMs, packet switches, ATM

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attempted word play does not alter the fact that SBCIS directly markets DSL service to the public as part of a high speed Internet access product.

[29] Memorandum Opinion and Order, Applications of Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, For Consent to Transfer Control, 14 FCC Rcd 14712 (1999), vacated in part sub nom. Association of Communications Enters. V. FCC, 235 F3d 662 (D.C. Cir. 2001).

[30] See Second Memorandum Opinion and Order, Ameritech Corp., Transferor, and SBC Communications Inc., Transferee, for Consent to Transfer Control, 15 FCC Rcd 17521, 17527, ¶ 10 (2000).

switches, Frame Relay engines. See id. at 14972-73, ¶ 3(d).[31] With respect to DSL transport, SWBT simply executes ASI's business strategies through the marketing and sales services that SWBT, consistent with the Merger Conditions, has contracted to provide. See Brown/Habeeb Joint Reply Aff. ¶ 8. ASI and SWBT (on behalf of ASI) market DSL transport services solely to ISPs. Id.

ASI's DSL transport offering carries all of the hallmarks of a wholesale service that this Commission has identified. ISPs (including SBC's affiliate, SBIS) sell a high speed Internet access service directly to the ultimate consumers and they, rather than ASI, have a direct relationship with the end user customers. Customers order high speed Internet access directly from an ISP, and they pay whatever price has been established by that ISP for the desired Internet access product. See Brown/Habeeb Joint Reply Aff. ¶ 10(b)-(d). DSL transport prices are established through direct negotiations between ASI and any ISP seeking to offer a packaged Internet access product in Missouri.

When a customer contacts SWBT in the first instance, SWBT sales personnel (pursuant to a joint-marketing arrangement) will offer to sell the customer a package of high speed Internet access from SBIS. If the perspective customer asks to use another ISP, the sales personnel will transfer the customer directly to the Internet Service Provider Service Center ("ISPSC") – the service center that assists ISPs in ordering wholesale DSL transport service for use as an input

[31] AT&T's assertion that SWBT improperly "focuses exclusively on the offerings of its subsidiary, ASI," rather than upon SWBT's "own DSL service offerings," AT&T Comments at 35, bespeaks a complete misunderstanding of SWBT's products and services in the wake of the merger between SBC and Ameritech. SWBT has not focused upon "its own DSL service offerings" because, with the exception of the broadband service discussed in Carol Chapman's original affidavit, SWBT has no DSL service offerings. Because the Merger Conditions precluded SWBT from owning Advanced Services Equipment, the only DSL services subject to section 251 obligations (as a consequence of the ASCENT decision) are those offered by ASI.

component in their high speed Internet access product. Because Missouri end users can obtain access to DSL transport solely as part of a packaged Internet access product, and even then only from ISPs with connectivity to ASI's ATM network, only ISPs can authorize ASI to provision DSL transport. See Brown/Habeeb Joint Reply Aff. ¶ 10(b). If the requested ISP declines the customer, that is the end of the matter; ASI does not offer DSL transport on a stand alone basis beyond the small number of former SWBT customers who have yet to be transitioned from their grandfathered service. See Brown Aff. ¶¶ 43-44; Brown/Habeeb Joint Reply Aff. ¶¶ 7, 10(c). In addition, a customer's ISP is the first point of contact for customer support if trouble arises with the end user's Internet connection. See Brown/Habeeb Joint Reply Aff. ¶ 10(g). Since the ISP has the contractual relationship with ASI, only the ISP can disconnect their customers' DSL transport service. See id. ¶ 10(f). As this Commission has recognized, this pattern of relationships bear all the hallmarks of a retail service from the ISP to the end user customer. Second Advanced Services Order, 14 FCC Rcd at 19244, ¶ 15.

Indeed, the only substantive difference between the DSL transport offering deemed wholesale in the Second Advanced Services Order and ASI's own DSL transport offering involves a de minimis billing arrangement into which ASI has entered at the express request of certain ISP customers.[32] Specifically, after SWBT left the retail DSL business in early 2000, a number of small ISPs balked at the anticipated costs of billing their end user customers for the DSL transport services that the ISPs would purchase from ASI going forward. To help avoid

[32] While this Commission specifically examined Verizon's wholesale service arrangement in the Second Advanced Services Order, the Commission nowhere proclaimed that every incumbent must offer DSL transport in the precise manner as did Verizon for that service to be considered wholesale. Rather, the Commission generically determined that "an incumbent LEC offering of DSL services to [ISPs] as an input component to the [ISP's] high speed Internet service offering is not a retail offering." Second Advanced Services Order, 14 FCC Rcd at 19246, ¶ 19.

adverse financial consequences for these ISPs, ASI agreed to provide the option of "split-billing." See Brown/Habeeb Joint Reply Aff. ¶¶ 9, 11. In other words, an ISP could ask ASI to bill the ISP's end-user customers directly, rather than to bill the ISP itself for the monthly recurring, installation, and termination costs associated with ASI's DSL transport service. See id. ¶¶ 9, 10(e). Under this arrangement, only the billing is affected; all other customer-provider contacts take place directly between the end-user and the ISP.

This split-billing arrangement, which represents roughly one percent of all of ASI's DSL transport arrangements in Missouri, see id. ¶ 8 n.6, in no way alters the wholesale nature of ASI's DSL transport offering. The ISP continues to sell its high speed Internet access product directly to the ultimate consumer, which is the critical factor in determining whether that offering is sold at retail. Second Advanced Services Order, 14 FCC Rcd at 19243, ¶ 13. The ISP authorizes the order for DSL transport; the ISP sets the price that its customers pay; the ISP remains the first point of contact for any customer-service problems; and the ISP alone can arrange to have the DSL transport service disconnected. ASI simply does not sell DSL transport services to the ultimate end-user consumers. ASI's DSL transport service offering "is not a retail offering." Id. at 19246, ¶ 19. Under the plain statutory language of section 251(c)(4), this service need not be offered for resale at a wholesale discount. See id.; 47 U.S.C. § 251(c)(4).

III. SOUTHWESTERN BELL PROVIDES NONDISCRIMINATORY ACCESS TO ITS OPERATIONS SUPPORT SYSTEMS

In its initial application, Southwestern Bell demonstrated that it offers competing carriers nondiscriminatory access to the same operations support systems ("OSS") that this Commission has twice found to satisfy the requirements of section 271. Southwestern Bell Br. at 37-48; Ham Aff.; Noland Aff.; D. Smith Aff.; VanDeBerghe Aff.; Hamilton Aff.; McLaughlin Aff.; Dysart Aff. ¶¶ 45-51. The few allegations levied against isolated aspects of Southwestern Bell's OSS

do not detract from this Commission's previous findings that SWBT provides nondiscriminatory access to OSS that are operationally ready to handle both current demand and reasonably foreseeable future volumes. Kansas/Oklahoma Order ¶ 106; Texas Order, 15 FCC Rcd at 18400, ¶ 99.

SWBT first addresses the claim, raised by two CLECs, that its maintenance and repair OSS is deficient based on incompleteness of line record information for CLEC UNE-P orders contained in SWBT's Loop Maintenance Operations System ("LMOS"). As SWBT demonstrates below, to date, no CLEC has presented evidence indicating that SWBT has failed to work trouble reports on a timely basis once those reports have been received. Similarly, no CLEC has presented evidence that any end-user troubles were not corrected, or that maintenance and repair services were not delivered, once the trouble report was called into SWBT's LOC. Second, SWBT addresses claims that its flow through data is reported incorrectly and that its performance is poor. SWBT shows that these claims are meritless. Finally, SWBT responds to the grab-bag of complaints raised by various CLECs, nearly all of which have been rejected previously by this Commission or rely on unsubstantiated, anecdotal evidence. None of these claims should lead this Commission to deviate from its prior findings that SWBT's region-wide OSS satisfies the requirements of section 271.

A. Southwestern Bell Provides Nondiscriminatory Access To Its Maintenance and Repair Systems

This Commission has twice concluded that SWBT "provides nondiscriminatory access to maintenance and repair OSS functions." Texas Order, 15 FCC Rcd at 18457, ¶ 201; see also Kansas/Oklahoma Order ¶ 161. Toolbar Trouble Administration ("TBTA"), one of the maintenance and repair interfaces SWBT offers CLECs, provides CLECs with access to the same back office systems used by SWBT's retail service representatives. See Kansas/Oklahoma

Order ¶ 161; Texas Order, 15 FCC Rcd at 18457, ¶ 201; see also Ham Aff. ¶¶ 218, 220-225; VanDeBerghe Aff. ¶ __; D. Smith Aff. ¶ __. Two commenters take issue with one aspect of SWBT's maintenance and repair OSS — namely, the completeness of the UNE-P line record information contained in LMOS, and the potential impact of an incomplete record on the ability of CLECs to open an electronic trouble report through TBTA. See, e.g., AT&T Comments at 44-45; AT&T's Willard Decl. ¶¶ 9-25; El Paso Networks/PacWest Joint Comments at 18-20.[33]

No CLEC, including these commenters, has presented evidence demonstrating that this issue resulted in any end-user troubles or failure by SWBT to work trouble reports on a timely basis. See LMOS Reply Aff. ¶¶ 9, 18 & n.5. Moreover, as explained below, the impact of this issue was minor, it did not affect resolution of any end user's trouble report, and has had minimal impact on reported performance data. In sum, and despite the ink spilled on this issue by these two commenters, there is a complete absence of "evidence of discrimination or competitive harm," entailing the conclusion that this issue has had "little competitive impact." Kansas/Oklahoma Order ¶ 138.

LMOS is a legacy system that has been in place since the mid-1970s. LMOS Reply Aff. ¶ 12. LMOS is currently used in the creation of electronic trouble reports for both retail POTS service and CLEC resale and UNE-P orders. Id. Specifically, when a CLEC or a SWBT retail representative enters a trouble report in TBTA, the interface queries LMOS to verify the account information for the line with the reported trouble. Id. ¶¶ 4 n.1, 17. Upon verification of the account information by LMOS, there "are no manual interventions in the trouble administration process that creates trouble reports for resale services[,] UNEs," or retail POTS. Ham Aff. ¶

[33] Notably, Birch Telecom, the CLEC that first raised this issue with SWBT, did not file comments in this proceeding. Instead, it chose to work collaboratively with SWBT to investigate and resolve the issue.

222. The line records contained in LMOS are updated nightly during the business week, drawing data from SWBT's billing systems.[34] LMOS Reply Aff. ¶¶ 12-13. The processing of a UNE-P order,[35] affects the LMOS line record for that telephone number in two ways. First, the "D," or disconnect, order changes the status of the line record in LMOS to disconnected. Second, the "C," or change, order updates the line record to reflect the CLEC that placed the UNE-P order as the customer's new service provider. LMOS Reply Aff. ¶ 13 & n.8.

Prior to recent system enhancements SWBT has implemented, there were instances in which the C order posted to LMOS out of sequence, that is, before the D order. See id. ¶ 14. Because the C order encountered a working line, it would error out to the LMOS Data Resolution Center (LDRC) for manual handling. When the D order subsequently posted to LMOS, it changed the line record to disconnected. This designation of "disconnected" affects only the LMOS record; it has no impact on service to the end user. Id. ¶ 13 n.10.[36]

Late last year, Birch notified SWBT that, on occasion, it would receive a message from TBTA stating that one of its active UNE-P accounts had been "disconnected or ported out," and that TBTA would reject any trouble report it attempted to open on that account. Id. ¶¶ 16-17.

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[34] As explained below, as of March 28, 2001, LMOS now also draws data from SWBT's SORD database.

[35] The initial Affidavit of Elizabeth A. Ham contains a discussion of the UNE-P order process. Ham Aff. ¶¶ 211-216.

[36] Prior to September 2000, responsibility for manually processing these C orders belonged to the Mechanized Loop Assignment Centers ("MLACs"). LMOS Reply Aff. ¶ 19. Because this issue has no affect on an end user's service, updating LMOS line records that fell out for manual correction was not a top priority for the MLACs, which also had responsibility for the provisioning and the resolution of end-user troubles. Id. In September 2000, SWBT created the LMOS Data Resolution Center ("LDRC"), which has responsibility for resolving and correcting LMOS database errors. Id. ¶¶ 15, 20. As a result of the MLACs' focus on resolving problems that affected end user service, the newly created LDRC faced a considerable accumulation of errors on both retail and CLEC UNE-P records that required manual handling.

AT&T raised a similar issue with SWBT in March 2001, providing a list (covering December 2000 through February 2001) of 129 telephone numbers for which it was unable to open an electronic trouble report through TBTA — of which 102, or less than 0.5 percent of the electronic reports AT&T submitted during those three months, were found to have inaccurate LMOS line records. Id. ¶ 7.

As noted above, TBTA queries LMOS for line record information; when LMOS indicates that a line is disconnected, an electronic trouble report cannot be opened on that line. This is true for both SWBT retail and CLEC accounts. Id. ¶ 17 & n.12. In such a case, the CLEC must telephone the LOC, which will confirm through SORD, that the line is, in fact, working and will open a trouble ticket. Id. ¶ 18. In addition, beginning in January 2001, as part of its response to ongoing discussions with Birch, the LOC also faxes a form to the LMOS Data Resolution Center ("LDRC") indicating that the line record should be updated in LMOS on an expedited basis. Id. ¶ 21. The LDRC assigned first priority to requests for expedited handling on UNE-P accounts. Id. ¶ 22. SWBT also began developing fixes that would prevent the D and the C orders from posting to LMOS out of sequence and would enable SWBT mechanically to update any UNE-P records in LMOS affected by a sequencing error. Id.

In the last two months, SWBT has implemented a two-part system enhancement, designed to ensure that UNE-P service orders post to LMOS in the proper sequence. Id. ¶ 23. First, as of March 29, 2001, D orders are sent to LMOS after completing in SORD, rather than waiting for the D order to post to CRIS, enabling them to reach LMOS prior to the C order, which LMOS still receives after it posts in CABS. Id. ¶¶ 23, 25. Second, as of May 11, 2001, SWBT fully implemented Telcordia WFA/DO Release 4.6 in its five-state region. Id. ¶ 24. This release enabled SWBT to program WFA/DO to send the D and the C orders to SORD in the

proper sequence. Together, these new processes eliminate the "out-of-sequence" condition discussed above. Id. ¶ 25.

In addition, SWBT investigated the impact of out-of-sequence posting on the LMOS database, by comparing UNE-P records in the LMOS and CABS databases. SWBT found that roughly 10 percent of the UNE-P records were designated as "disconnected" in LMOS, but as "working" in CABS, which indicated that the C order had posted to LMOS before the D order. Id. ¶ 26. As of May 11, 2001, SWBT completed the process of correcting the status of all these records in LMOS, allowing CLECs to open a trouble report electronically through TBTA for those UNE-P lines. Id. ¶ 27. As a result, there is no longer a backlog in the LDRC of sequencing errors on CLEC UNE-P line records requiring manual processing. Id. ¶ 27 n.16.

However, on new LMOS record updates, even with proper sequencing of the D and C orders, there can be a lag between the time the D order posts to LMOS from SORD, and the time the C order posts from CABS. If a CLEC attempts to submit an electronic trouble report in a situation where the D order has posted, but not the C, it will receive notification that the number has been "disconnected or ported out." The CLEC would then need to call the LOC to submit the report manually. Id. ¶ 29. The impact of this possible delay of posting of service orders is discussed in SWBT's CLEC Handbook, which provides CLECs with a description of this situation and instructions of how to open trouble tickets manually. Id. ¶¶ 30-31; see also id. ¶¶ 32-33.

In the course of its discussions with SWBT, Birch also questioned whether all of its trouble reports on its UNE-P accounts were being captured in the appropriate performance measurements. Id. ¶ 5. Data for performance measurements that require data from LMOS rely upon the Master Customer Number ("MCN") indicated on the line record, to associate the

trouble report with the appropriate CLEC. Id. ¶ 34. If a line is designated in LMOS as "disconnected," a trouble report for the line will not be associated with the appropriate CLEC, or included in its performance measurements, unless the LMOS record is updated before the trouble report closes. Id. ¶ 42. Instead, the data will be captured in the performance measurements for the former service provider on the account. Id.

By preventing the out-of-sequence problem, the system enhancements discussed above now allow trouble reports on UNE-P lines to be associated with the appropriate CLEC and captured in the performance measurements. Id. ¶ 35. Further, on May 4, 2001, the LOC began to implement a new process intended to ensure that performance data is accurately reported whenever a CLEC is unable to submit an electronic trouble report due to an inaccurate LMOS line record. Id. ¶ 36. If a CLEC calls in a trouble report on a UNE-P line to the LOC and indicates that it has not been able to submit that trouble electronically, the LOC service representative has been instructed to include the CLEC's four digit Alternate Exchange Carrier Number ("AECN") and the account class of service on the trouble ticket. Id. The Performance Measurements reporting team has designed procedures to capture this data, thereby allowing trouble reports to be included in the correct CLEC's performance measurements regardless of whether the record is updated in LMOS. This programming is scheduled to be completed in time for the reporting of May results in June 2001.[37] Id. ¶ 37; see also id. ¶ 38.

Finally, SWBT has conducted an analysis of the impact of inaccurate LMOS UNE-P line records on its past reporting on the performance measurements. Id. ¶ 39. SWBT analyzed the following performance measurements: Percent POTS/UNE-P Trouble Report within 10 Days (I-

[37] Because implementation of this process began on May 4, any trouble reports created manually on May 1-3 will not include the AECN or the account class of service.

10) of Installation (PM 35); Trouble Report Rate (PM 37); Trouble Report Rate Net of Installation and Repeat Reports (PM 37.1); and Percent Repeat Reports (PM 41). Id. ¶ 39.[38] In conducting this analysis, SWBT assumed that, because roughly 10 percent of the UNE-P line records in LMOS were inaccurate, the number of CLEC lines and trouble reports was understated by that amount. Id. ¶ 41 & Attach. C. SWBT further employed the conservative assumption that the CLEC trouble reports that were not properly captured in the performance measurements were incorrectly identified as SWBT retail trouble reports. Id. Attach. C. Although this analysis has the effect of increasing CLEC trouble report rates and decreasing SWBT retail rates, only two submeasures — Percent Trouble Reports Within 10 Days of Install – UNE-C Orders – No Field Work (PM 35-12) and Percent Repeat Reports – UNEs (PM 41-03) in March 2001 only — would have changed to out of parity under these assumptions. Id. ¶ 41 & Attach. C. Even for those two, the difference between CLEC and retail performance was only 0.5 percent for PM 35-12 (up from a reported difference of 0.33 percent) and 2.23 percent for PM 41-03 (up from a reported difference of 2.19 percent). Id. Attach. C. In sum, this analysis shows that any inaccuracies in LMOS for UNE-P orders — which SWBT has now implemented a number of processes to correct — had little impact, if any, on SWBT's reported maintenance and repair performance results.

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[38] Other performance measurements that rely on LMOS — Missed Repair Commitments (PM 38), Receipt To Clear Duration (PM 39), and Percent Out of Service Less Than 24 Hours (PM 40) — should not have been affected by any inaccuracies in the LMOS line records. Because this issue did not affect how SWBT handled trouble reports, there is no reason to believe that trouble duration or missed commitments would differ depending on whether the trouble report was opened on a UNE-P line with or without an inaccurate LMOS line record. LMOS Reply Aff. ¶ 40. Further, because PM 35.1 is a subset of PM 35 and is diagnostic, SWBT did not consider this measurement separately. Id.